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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,308	12/21/2001	Martin Devenney	99-60R1	9659

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SYMYX TECHNOLOGIES INC
LEGAL DEPARTMENT
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SANTA CLARA, CA 95051

EXAMINER

KOSLOW, CAROL M

ART UNIT	PAPER NUMBER
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1755

8

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

AS 8

Office Action Summary

Application N .

10/032,308

Applicant(s)

DEVENNEY ET AL.

Examiner

C. Melissa Koslow

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/1/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The drawings are approved under 37 CFR 1.84. Applicants are reminded of the changes to 37 CFR 1.84 and that the Draftsman no longer needs to approve the drawings. (See 65 Fed. Reg. 54603, 9/8/00).

JP 61-245099 cited in the information disclosure statement filed 24 October 2002 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

The provisional applications 60/142,276 and 60/159,004 have been considered but have a line drawn through them since they are not prior art and should not appear as such on the front of a patent.

The disclosure is objected to because of the following informalities: The continuing data statement on page 1, lines 5-7 is a duplicate of the inserted on page 1. The statement in these lines should be deleted. Appropriate correction is required.

Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows:

The first sentence of the specification does not include an indication of whether the prior PCT international application was published under PCT Article 21(2) in English. See MPEP 1895.

The effective filing date for claims 17-19 and the embodiment of claims 1-13, 16 and 20 where process where the europium source is EuOX' is 8 October 1999 since this subject matter

Art Unit: 1755

is taught in Provisional application 60/159,004, but not in Provisional application 60/142,276.

Provisional applications 60/159,004 and 60/142,276 do not teach processes where the deposition chamber has been evacuated to at least 10^{-4} before the deposition nor the subject matter of claim 21. These teachings are found in PCT/US00/16904. Thus the effective filing date for claims 14, 15 and 21-24 is 16 June 2000.

The effective filing date for embodiment of claims 1-13, 16 and 20 where process where the europium source is EuX_2 or EuX_3 is 2 July 1999 since this subject matter is taught in Provisional application 60/142,276.

Claims 18, 19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 is improperly dependent on claim 14, since claim 14 is directed to a process and there is no teachings of a and b in claim 14. Claim 18 should depend from claim 17. Claim 19 is improperly dependent on claims 14 and 15, since these claims are directed to a process. It is believed claim 19 should depend from claims 17 or 18. Also claim 19 does not further limit claims 14, 15, 17 or 18 since it claimed the intended use of the phosphor. The intended use of a phosphor does not further define the phosphor. Claim 20 is indefinite since it implies there are two methods in claims 1-6, but there are six different methods. It is suggested to reword this claim as "prepared according to one of the methods of claims 1-6".

Claims 1, 4-7, 10-13 and 17-24 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for CsX phosphors containing 10^{-3} to 5 mol% of europium where X is Cl and/or Br, the methods for forming these phosphor and binderless

Art Unit: 1755

phosphor screen comprising this phosphor, does not reasonably provide enablement for CsX:Eu phosphors where X is Cl and/or Br and the amount of europium is undefined, the methods for forming these phosphor and binderless phosphor screen comprising this phosphor. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

The claims recite CsX:Eu phosphors where X is Cl and/or Br and the amount of europium is undefined, the methods for forming these phosphor and binderless phosphor screen comprising this phosphor. However, the specification only teaches CsX phosphors containing 10^{-3} to 5 mol% of europium where X is Cl and/or Br, the methods for forming these phosphor and binderless phosphor screen comprising this phosphor. Such a limited disclosure does not support the breadth of the instant claims. The examiner suggests the incorporation of the amount of europium in the claims.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

(g)(1) during the course of an interference conducted under section 135 or section 291, another inventor involved therein establishes, to the extent permitted in section 104, that before such person's invention thereof the invention was made by such other inventor and not abandoned, suppressed, or concealed, or (2) before such person's invention thereof, the invention was made in this country by another inventor who had not abandoned, suppressed, or concealed it. In determining priority of invention under this subsection, there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 20 and 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Pedrero et al.

This article teaches producing CsCl:Eu crystals or phosphors by mixing CsCl and EuCl₂, melting the mixture the mixture and then cooling the melt. CsCl melts at 645°C and EuCl₂ melts at 731°C, thus the melting temperature of the process is above 450°C. The claimed process clearly reads upon that taught. Thus the taught crystals must be the same as those in claims 20 and 21. When the prior art and appellant both describe processes which are indistinguishable, then the products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962).

Claims 1, 2, 7, 8, 13, 20, 21 and 23 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

Struye et al teaches a binderless phosphor screen comprising a CsX:Eu phosphor, where X is Cl or Br produced by mixing CsX with 10⁻³ to 5 mol% of an europium compound selected from EuX'₂, EuX'₃ and EuOX', where X' is F, Cl, Br or I; firing this mixture at a temperature above 450°C; cooling and recovering the phosphor. The patent teaches the binderless phosphor screen can be produced by applying the phosphor produced by the above process to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The taught processes are identical to those claimed and the taught phosphor composition falls within the claimed formula. The taught phosphor would inherently have the claimed property of claim 21. When the prior art and appellant both describe processes which are indistinguishable, then the

Art Unit: 1755

products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962).

Claims 1, 2, 4, 5, 7, 8, 10, 11, 13-16 and 20-24 are provisionally rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

Application No. 09/745,796 (Patent Application Publication 2001/0007352) teaches a binderless phosphor screen comprising a CsX:Eu phosphor, where X is Cl or Br produced by mixing CsX with 10^{-3} to 5 mol% of an europium compound selected from EuX'_2 , EuX'_3 and EuOX' , where X' is F, Cl, Br or I; firing this mixture at a temperature above 450°C ; cooling and recovering the phosphor. The patent teaches the binderless phosphor screen can be produced by applying the phosphor produced by the above process to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The screen can also be produced by bringing heatable multiple containers of CsX and an europium compound selected from EuX'_2 , EuX'_3 and EuOX' , where X' is F, Cl, Br or I or a single container comprising a mixture of CsX and an europium compound selected from EuX'_2 , EuX'_3 and EuOX' , where X' is F, Cl, Br or I into a deposition chamber with a substrate, evacuating the chamber a pressure of 4×10^{-5} mbar and depositing the mixtures to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The exemplified europium compound is EuOBr. The taught processes are identical to those claimed and the taught phosphor composition falls within the claimed formula. The taught phosphor would inherently have the claimed property of claim 21. When the prior art and appellant both describe processes which are indistinguishable, then the products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962). The reference teaches the screen is

Art Unit: 1755

used in an X-ray recording system. These systems record and reproduce images by exposing the phosphor containing screen to X-rays, stimulating the exposed screen to a stimulating wavelength to cause the phosphor to release radiation and collecting the released radiation. The reference teaches the stimulating wavelength of the taught phosphor is 690 nm. Thus the reference teaches the process of claim 16.

Claims 1, 2, 7, 8, 13, 20, 21 and 23 are provisionally rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

Application 09/595,183 teaches a binderless phosphor screen comprising a CsX:Eu phosphor, where X is Cl or Br produced by mixing CsX with 10^{-3} to 5 mol% of an europium compound selected from EuX'_2 , EuX'_3 and EuOX' , where X' is F, Cl, Br or I; firing this mixture at a temperature above 450°C; cooling and recovering the phosphor. The reference teaches the binderless phosphor screen can be produced by applying the phosphor produced by the above process to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The taught processes are identical to those claimed and the taught phosphor composition falls within the claimed formula. The taught phosphor would inherently have the claimed property of claim 21. When the prior art and appellant both describe processes which are indistinguishable, then the products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962).

Claims 1, 2, 7, 8, 13, 20, 21 and 23 are provisionally rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

Application 09/995,561 teaches a CsX:Eu phosphor, where X is Cl or Br produced by mixing CsX with 10^{-3} to 5 mol% of an europium compound selected from EuX'_2 , EuX'_3 and

Art Unit: 1755

EuOX', where X' is F, Cl, Br or I; firing this mixture at a temperature above 450°C; cooling and recovering the phosphor. The reference teaches a binderless phosphor screen can be produced by applying the phosphor produced by the above process to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The taught processes are identical to those claimed and the taught phosphor composition falls within the claimed formula. The taught phosphor would inherently have the claimed property of claim 21. When the prior art and appellant both describe processes which are indistinguishable, then the products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962).

Applicants need to clarify who is the actual inventive entity of the claimed processes, the screens and phosphors and who owned the claimed processes, the screens and phosphors at the time the inventions were made.

Claims 3-6, 9-12, 20, 22 and 24 are rejected under 35 U.S.C. 103(a) as being obvious over Struye et al.

The assignees for the present application are Symyx Technologies, Inc and Agfa-Gevaert, N.V.. The assignee for Struye et al is Agfa-Gevaert. Thus the invention is not owned by, or subject to an obligation of assignment to, the same entity as Struye et al and there is no evidence on the record showing the invention was owned by, or subject to an obligation of assignment to, the same entity as Struye et al at the time this invention was made. Accordingly, Struye et al is not disqualified as prior art through 35 U.S.C. 102(f) or (g) in any rejection under 35 U.S.C. 103(a) in this application.

Art Unit: 1755

As stated above, this patent teaches the claimed broad process. The taught amount of europium overlaps that claimed and suggests the claimed X' definitions. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242 (CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). The reference suggests the claimed process, binderless screen and phosphor.

Claims 3, 6, 9 and 12 are provisionally rejected under 35 U.S.C. 103(a) as being obvious over copending Application No. 09/745,796 (Patent Application Publication 2001/0007352) which has a common inventor with the instant application.

The assignees for the present application are Symyx Technologies, Inc and Agfa-Gevaert, N.V.. The assignee for Application No. 09/745,796 is Agfa-Gevaert. Thus the invention is not owned by, or subject to an obligation of assignment to, the same entity as Application No. 09/745,796 and there is no evidence on the record showing the invention was owned by, or subject to an obligation of assignment to, the same entity as Application No. 09/745,796 at the time this invention was made. Accordingly, Application No. 09/745,796 is not disqualified as prior art through 35 U.S.C. 102(f) or (g) in any rejection under 35 U.S.C. 103(a) in this application.

As stated above, this published application teaches the claimed broad process. The taught amount of europium overlaps that claimed. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242

Art Unit: 1755

(CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). The reference suggests the claimed processes and binderless screen.

Claims 3-6, 9-12, 20, 22 and 24 are provisionally rejected under 35 U.S.C. 103(a) as being obvious over copending Application No. 09/595,183 which has a common inventor with the instant application.

The assignees for the present application are Symyx Technologies, Inc and Agfa-Gevaert, N.V. The assignee for Application No. 09/595,183 is Agfa-Gevaert. Thus the invention is not owned by, or subject to an obligation of assignment to, the same entity as Application No. 09/595,183 and there is no evidence on the record showing the invention was owned by, or subject to an obligation of assignment to, the same entity as Application No. 09/595,183 at the time this invention was made. Accordingly, Application No. 09/595,183 is not disqualified as prior art through 35 U.S.C. 102(f) or (g) in any rejection under 35 U.S.C. 103(a) in this application.

As stated above, this application teaches the claimed broad process. The taught amount of europium overlaps that claimed. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242 (CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). The reference suggests the claimed processes and binderless screen.

Claims 3-6, 9-12, 20, 22 and 24 are provisionally rejected under 35 U.S.C. 103(a) as being obvious over copending Application No. 09/995,561 which has a common inventor with the instant application.

The assignees for the present application are Symyx Technologies, Inc and Agfa-Gevaert, N.V. The assignee for Application No. 09/995,561 is Agfa-Gevaert. Thus the invention is not owned by, or subject to an obligation of assignment to, the same entity as Application No. 09/995,561 and there is no evidence on the record showing the invention was owned by, or subject to an obligation of assignment to, the same entity as Application No. 09/995,561 at the time this invention was made. Accordingly, Application No. 09/995,561 is not disqualified as prior art through 35 U.S.C. 102(f) or (g) in any rejection under 35 U.S.C. 103(a) in this application.

As stated above, this application teaches the claimed broad process. The taught amount of europium overlaps that claimed. Product claims with numerical ranges which overlap prior art ranges were held to have been obvious under 35 USC 103. *In re Wertheim* 191 USPQ 90 (CCPA 1976); *In re Malagari* 182 USPQ 549 (CCPA 1974); *In re Fields* 134 USPQ 242 (CCPA 1962); *In re Nehrenberg* 126 USPQ 383 (CCPA 1960). The reference suggests the claimed processes and binderless screen.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Art Unit: 1755

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-13 and 20-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 8 of U.S. Patent No. 6,479,835. Although the conflicting claims are not identical, they are not patentably distinct from each other because the binderless phosphor screen in the claimed detector is produced by a process nearly identical to the method as claimed in the present application.

This patent claims a detector comprising a binderless phosphor screen comprising a CsX:Eu phosphor, where X is Cl or Br produced by mixing CsX with 10^{-3} to 5 mol% of an europium compound selected from EuX'_2 , EuX'_3 and EuOX' , where X' is F, Cl, Br or I; firing this mixture at a temperature above 450°C ; cooling and recovering the phosphor. The claims teaches the binderless phosphor screen can be produced by applying the phosphor produced by the above process to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The taught processes are identical to those claimed and the taught phosphor composition falls within the claimed formula. The taught phosphor would inherently have the claimed property of claim 21. When the prior art and appellant both describe processes which are indistinguishable, then the products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962).

Claims 1-13 and 20-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4, 5, 7 and 8 of

Art Unit: 1755

compending Application No. 09/745,796, which is Patent Application Publication 2001/0007352.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed binderless phosphor screen is produced by a process nearly identical to the method as claimed in the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

This application claims a binderless phosphor screen comprising a CsX:Eu phosphor, where X is Cl or Br produced by mixing CsX with 10^{-3} to 5 mol% of an europium compound selected from EuX'_2 , EuX'_3 and EuOX' , where X' is F, Cl, Br or I; firing this mixture at a temperature above 450°C; cooling and recovering the phosphor. The claims teach the binderless phosphor screen can be produced by applying the phosphor produced by the above process to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The taught processes are identical to those claimed and the taught phosphor composition falls within the claimed formula. The taught phosphor would inherently have the claimed property of claim 21. When the prior art and appellant both describe processes which are indistinguishable, then the products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962).

Claims 1-13 and 20-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of compending Application No. 09/595,185. Although the conflicting claims are not identical, they are not patentably distinct from each other because the binderless phosphor screen in the claimed

Art Unit: 1755

detector is produced by a process nearly identical to the method as claimed in the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Application 09/595,183 claims a binderless phosphor screen comprising a CsX:Eu phosphor, where X is Cl or Br produced by mixing CsX with 10^{-3} to 5 mol% of an europium compound selected from EuX'_2 , EuX'_3 and EuOX' , where X' is F, Cl, Br or I; firing this mixture at a temperature above 450°C ; cooling and recovering the phosphor. The application claims the binderless phosphor screen can be produced by applying the phosphor produced by the above process to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The taught processes are identical to those claimed and the taught phosphor composition falls within the claimed formula. The taught phosphor would inherently have the claimed property of claim 21. When the prior art and appellant both describe processes which are indistinguishable, then the products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962).

Claims 1-13 and 20-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5-10 of copending Application No. 09/995,561. Although the conflicting claims are not identical, they are not patentably distinct from each other because the binderless phosphor screen in the claimed phosphor and methods suggest the phosphor and methods claimed in the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Art Unit: 1755

Application 09/995,561 claims a CsX:Eu phosphor, where X is Cl or Br produced by mixing CsX with 10^{-3} to 5 mol% of an europium compound selected from EuX'_2 , EuX'_3 and EuOX' , where X' is F, Cl, Br or I; firing this mixture at a temperature above 450°C; cooling and recovering the phosphor. The application claims a binderless phosphor screen can be produced by applying the phosphor produced by the above process to a substrate by a method selected from chemical vapor deposition or physical vapor deposition. The taught processes are identical to those claimed and the taught phosphor composition falls within the claimed formula. The taught phosphor would inherently have the claimed property of claim 21. When the prior art and appellant both describe processes which are indistinguishable, then the products may also be assumed to be inherently indistinguishable. *In re Myers* 159 USPQ 339 (CCPA 1968); *In re Prindle* 132 USPQ 282 (CCPA 1962).

Applicants are required to provide the allowed claims for U.S. applications 09/596,519; 09/595,487; 09/595,182 and 09/595,181. These application claim benefit to provisional applications 60/142,276 and 60/159,004. This requirement is being made in order to determine if an obviousness double patent rejection needs to be made over these applications.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Koslow whose telephone number is (703) 308-3817. The examiner can normally be reached on Monday-Friday from 8:00 AM to 3:30 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached at (703) 308-3823.

The fax number for Amendments filed under 37 CFR 1.116 or After Final communications is (703) 872-9311. The fax number for all other official communications is (703) 872-9310.

Art Unit: 1755

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661 or (703) 308-0662.

cmk
November 25, 2002



C. Melissa Koslow
Primary Examiner
Tech. Center 1700